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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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R17-18 at 41 Ill. Reg. 9930, effective July 5, 2017; amended in R19-19 at 43 Ill. Reg. 9674, effective August 22, 2019; amended in R19-1 at 44 Ill. Reg. _____, effective _____.

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act. [415 ILCS 5].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board under authority granted to the Board by Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, informational, or time-limited water quality standard proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding under Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency public comment" means information submitted to the Agency on a

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proposed Agency decision either by oral statement made at an Agency public hearing or written statement submitted to the Agency during the period for comment by the public.

"Agency public hearing" means a public proceeding to provide interested persons an opportunity to understand and comment on a proposed Agency decision.

"Agency public hearing record" means the record of the Agency public hearing, as kept by the Agency.

"Agency recommendation" means the document filed by the Agency under Section 28.1(d)(3), 37(a), or 38.5(g) of the Act in which the Agency provides its recommended disposition of a petition for an adjusted standard, a variance, or a time-limited water quality standard, respectively. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218, 104.416, and 104.550.)

"Agency record" means a record of final Agency decision, as kept by the Agency, of those documents required by the State agency record meeting the applicable requirements of 35 Ill. Adm. Code Part 105.

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval under any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map.* [415 ILCS 5/7.1]

"Attorney General" means the Attorney General of the State of Illinois or his or her representatives.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the

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Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board under Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that summarizes the facts of a proceeding, states the pertinent laws, and argues how the laws apply to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"CAAPP permit" means any permit issued, renewed, amended, modified or revised under Section 39.5 of the Act.

"CAAPP permit appeal" means an appeal of a CAAPP permit as addressed by 35 Ill. Adm. Code Part 105.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor under Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board under Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

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"Clean Air Act" or "CAA" means the federal *Clean Air Act, as now and hereafter amended (43 USC 7401 et seq.)*. [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act (33 USC 1251 et seq.).

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory, regulatory, and time-limited water quality standard proceedings. COOL is located on the Board's website at pcb.illinois.gov.

"Code of Civil Procedure" means 735 ILCS 5.

"Complaint" means the initial filing that begins an enforcement proceeding under Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article*. [415 ILCS 5/7.1]

"Counter-complaint" means a pleading that a respondent files stating a claim against a complainant in an enforcement proceeding. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files stating a claim against a co-party in an enforcement proceeding. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land, and water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board must decide an adjudicatory proceeding. (See

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Subpart C. See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the timeframe established by the Act within which the Board must make a final decision in specified adjudicatory proceedings. (See Subpart C. See also Sections 38(a), 40, and 40.1 of the Act, which establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" *means paper that has been processed to remove inks, clays, coatings, binders and other contaminants.* [415 ILCS 20/2.1]

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function under Section 4(r) of the Act.

"Digital signature" *means a type of electronic signature created by transforming an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic document has been altered since the transformation was made. A digital signature is a security device.* [5 ILCS 175/5-105]

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

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"Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.* [5 ILCS 175/5-105]

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means *a signature in electronic form attached to or logically associated with an electronic document.* [5 ILCS 175/5-105]

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed under Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"EPRR Act" means the Electronic Products Recycling and Reuse Act. [415 ILCS 150]

"Ex parte communication" means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board.* For this definition, a time-limited water quality standard is considered a regulatory matter. *"Ex parte communication" does not include the following:*

statements by a person publicly made in a public forum, including pleadings, transcripts, public comments, and public remarks made part of the proceeding's record;

statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a

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matter; and

statements made by a State employee of the Board to Board members or other employees of the Board. [5 ILCS 430/5-50(b)] For this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted under Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40. [415 ILCS 5/28.2]*

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review. (See Subpart I)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer when the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act. [5 ILCS 100]

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"Identical-in-substance rules" or "identical-in-substance regulations" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois.* [415 ILCS 5/7.2]

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board to seek input and comment from the public regarding the need for a rulemaking on a specific subject.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with permission of the Board. (See Section 101.402.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the permission the Board. (See Section 101.402.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 and 35 Ill. Adm. Code 103.206.)

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"Misnomer" means a mistake in the name of a properly included party.

"Motion" means a request made to the Board or the hearing officer for obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.* [415 ILCS 5/3.330(b)]

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act.* [415 ILCS 5/7(a)]

"Notice list" means the list of persons in a regulatory or time-limited water quality standard proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section. See also 35 Ill. Adm. Code 102.422 and 104.520(b)(4).)

"Notice to reinstate" means a document filed that restarts the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made under Title XVI of the Act.

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"OSFM record" means a record of final OSFM decision, as kept by the OSFM, of those documents of the OFSM that constitute the OSFM record relating to the eligibility and deductible decision and meeting the applicable requirements of 35 Ill. Adm. Code Part 105.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding but is not a party, or who takes part in a regulatory or other quasi-legislative proceeding or a time-limited water quality standard proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the proceeding's notice list, testifying at hearing, or making public remarks at a Board meeting. The participants in a time-limited water quality standard proceeding include the petitioner and the Agency and are further described at 35 Ill. Adm. Code 104.520(b).

~~"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.~~

"Party" means the person by or against whom an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation under Section 30 of the Act during an ongoing proceeding. (See Section 101.404)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board under Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

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"Petition" means the initial filing in an adjudicatory proceeding (other than an enforcement proceeding,) or a time-limited water quality standard proceeding.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" is defined at Section 3.330(a) of the Act for this Part and 35 Ill. Adm. Code 107.

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board under Section 40.1 of the Act.

"Postconsumer material" means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.* Additionally, it includes *all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream.* [415 ILCS 20/3(f)(2)(i) and (ii)] (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case or a time-limited water quality standard proceeding to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing.* [415 ILCS 5/27(d)] (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board under authority granted by Section 5 of the Act or as otherwise provided by law. Board proceedings are generally of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings). A time-limited water quality standard is neither adjudicatory nor subject to rulemaking procedural requirements. (See 415 ILCS 5/38.5(a), (1).)

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

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"Provisional variance" means a short-term variance sought by an applicant and issued by the Agency under Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"PSD" means the Prevention of Significant Deterioration of Air Quality program as authorized by Section 9.1(c) of the Act and as adopted by 35 Ill. Adm. Code Part 204.

"PSD permit" means any PSD permit issued, extended or revised under Section 9.1(c) of the Act and 35 Ill. Adm. Code Part 204.

"PSD permit appeal" means an appeal of a PSD permit as addressed by 35 Ill. Adm. Code Part 105.

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d))

"PWSO Act" means the Public Water Supply Operations Act. [415 ILCS 45]

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required under Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during a proceeding.

"Recycled paper" means paper that contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

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"Regulatory hearing" or "proceeding" means a hearing or proceeding held under Title VII of the Act or other applicable law regarding regulations.

"Regulatory relief mechanisms" means variances, provisional variances, adjusted standards, and time-limited water quality standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for Part 130, *describing, depicting, containing, constituting, reflecting or recording*. [415 ILCS 5/7.1]

"Requester" means, for Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (43 USC 6901 et seq.).

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law to adopt, amend, or repeal a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H)

"SDWA" means the federal Safe Drinking Water Act (43 USC 300f et seq.).

"Service" means delivery of a document upon a person. (See Sections 101.300(c) and 101.304)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory, adjudicatory, or time-limited water quality standard proceeding upon whom parties or participants must serve motions, prefiled questions, prefiled testimony, and any other documents that the parties or participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section. See also 35 Ill. Adm. Code 102.432.)

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"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought under Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding under an order of the Board or by operation of law. (See Section 101.514)

"Subpoena" means a command to appear at a specified time and place to testify on a specified matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516)

"Third party complaint" means a pleading that a respondent files stating a claim against a person who is not already a party to the enforcement proceeding. (See 35 Ill. Adm. Code 103.206.)

"Time-Limited Water Quality Standard" or "TLWQS" means a time-limited designated use and criterion for a specific pollutant or water quality parameter that reflects the highest attainable condition during the term of that relief. (See 35 Ill. Adm. Code 104.Subtitle E.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has*

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not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made under Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board under Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)]*

"Waiver" means the intentional relinquishing of a known right, usually regarding a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308)

"Website" means the Board's computer-based informational and filing service accessed on the Internet at pcb.illinois.gov.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND
STATUTORY DECISION DEADLINES

Section 101.302 Filing of Documents

- a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse for filing any document that does not comply with the minimum requirements of

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this Section.

- b) All documents to be filed with the Board must be filed with the Clerk.
 - 1) If allowed by the Board, the hearing officer, the Clerk, or the procedural rules to be filed in paper under subsection (h), documents must be filed at the following address:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
 - 2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for electronic filings through COOL are addressed in Section 101.1010.
 - 3) Each document being filed with the Clerk must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).
 - 4) The date on which a document is considered to have been filed is determined under Section 101.300(b).
 - 5) Serving a document upon a hearing officer does not qualify as filing it with the Clerk unless the document is submitted to the hearing officer during a hearing.
- c) Electronic documents may be filed through COOL under Subpart J. Paper documents may be filed with the Clerk by U.S. Mail, in person, or by third-party commercial carrier.
- d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
- e) The initial filings listed in this subsection require filing fees and will only be

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considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL with a valid credit card, but cannot be paid in cash.

- 1) Petition for Site-Specific Regulation, \$75;
 - 2) Petition for Variance, \$75;
 - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed under Section 40 or 40.3 of the Act, \$75;
 - 4) Petition to Review Pollution Control Facility Siting Decisions, under Section 40.1 of the Act, \$75;
 - 5) Petition for Adjusted Standard, under Section 28.1 of the Act, \$75; and
 - 6) Petition for TLWQS, under Section 38.5, \$75.
- f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in compliance with Section 101.304.
- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B, and double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:
- 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and
 - 2) The size of the type in the body of the text must be at least 12 point font, and in footnotes at least 10-point font.
- h) Unless the Board, the hearing officer, the Clerk, or the procedural rules provide otherwise, all documents must be filed through COOL electronically.

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- 1) If a document is filed in paper, the original and two copies of the document (three total) are required. If a document is filed through COOL in compliance with Subpart J, no paper original or copy of the document is required.
- 2) The following documents must be filed through COOL or on compact disk or other portable electronic data storage device, comply with Section 101.1030(g), and, to the extent technically feasible, in text-searchable Adobe PDF:
 - A) The Agency record required by 35 Ill. Adm. Code 105.212, 105.302, ~~or~~ 105.410, or 105.612 or 35 Ill. Adm. Code 125.208 (see 35 Ill. Adm. Code 105.116);
 - B) The OSFM record required by 35 Ill. Adm. Code 105.508 (see 35 Ill. Adm. Code 105.116);
 - C) The local siting authority record required by 35 Ill. Adm. Code 107.302 (see 35 Ill. Adm. Code 107.304); and
 - D) A petition filed under 35 Ill. Adm. Code 104 or 35 Ill. Adm. Code 106 (see 35 Ill. Adm. Code 104.106 and 35 Ill. Adm. Code 106.106)
- 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information under 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted under 35 Ill. Adm. Code 130 must be filed through COOL.
- 4) When filing a rulemaking proposal, if any document protected by copyright law (17 USC 101 et seq.) is proposed under Section 5-75 of the IAPA. [5 ILCS 100/5-75] to be incorporated by reference, the copyrighted document is prohibited from being filed electronically, but the remainder of the rulemaking proposal must be filed through COOL. In addition, the rulemaking proponent must:
 - A) File a paper original of the copyrighted document. The rulemaking proposal also must include:

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- i) The copyright owner's written authorization for the Board to make, at no charge to the Board, no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or
 - ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office no more than a total of two paper originals of the copyrighted document if the Clerk's Office notifies the proponent in writing that the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or
- B) File a license or similar documentation of access that, at no charge to the Board, gives the Board the rights, during and after the rulemaking, to do the following: electronically access the copyrighted document from the sole designated computer at the Board's Chicago office; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public.
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except with permission or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in compliance with subsection (h).
- j) Oversized Exhibits. When practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In compliance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.
- k) Page Limitation. No motion, brief in support of a motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of

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the Board or hearing officer. These limits do not include appendices containing relevant material; however, materials that may be readily available to the Board, such as prior Board opinions and orders, federal and Illinois regulations, and federal and Illinois statutes, need not be included in appendices.

- 1) Documents filed that do not comply with 35 Ill. Adm. Code. Subtitle A may be rejected by the Clerk or the hearing officer. Any rejection of a filing will include a description of the Board's rules that have not been met.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines

- a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), ~~and~~ Pollution Control Facility Siting Review (Section 40.1 of the Act), CAAPP permit appeals (Section 40.2 of the Act), and PSD permit appeals (Section 40.3 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.
- b) When the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions under Subpart H. This Section will be strictly construed when there is a decision deadline unless the Board receives a waiver under subsection (c).
- c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be titled and state which type of waiver it is, identify the proceeding by name and docket number, and be signed by the party or by an authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.
 - 1) An open waiver waives the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. Under Section 101.300(b)(4), the decision

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period restarts on the date on which the notice to reinstate is filed with the Board.

- 2) A time certain waiver must be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.610 Duties and Authority of the Hearing Officer

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

- a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;
- b) Administer oaths and affirmations;
- c) Allow for the examination of or examine witnesses to ensure a clear and complete record;
- d) Regulate the course of the hearing, including controlling the order of proceedings;
- e) Establish reasonable time limits on the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;
- f) Determine that a witness is adverse, hostile, or unwilling under Section 101.624;
- g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;
- h) Order the production of evidence under Section 101.614;

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- i) Order the filing of any required Agency record, OSFM record, local siting authority record or recommendation in a manner that provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;
- k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;
- l) Rule upon objections and evidentiary questions;
- m) Order discovery under Sections 101.614 and 101.616;
- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board consistent with Section 101.502;
- o) Set status report schedules;
- p) Require all participants in a rulemaking or TLWQS proceeding to state their positions regarding the proposal or petition, as applicable; and
- q) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence.

(Source: Amended at 44 Ill. Reg. _____, effective _____)

Section 101.626 Information Produced at Hearing

In compliance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part or 35 Ill. Adm. Code Part 105.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.

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- b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.
- c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.
- d) Written Testimony. Written testimony may be introduced by a party in a hearing only if provided to all other parties of record before the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objections before its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.
- e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record must have been made in the regular course of business, if it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time afterwards. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.
- f) Prior Inconsistent Statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.
- g) Oral and Written Statements. Oral and written statements from participants may be taken at hearing under Section 101.628.

(Source: Amended at 44 Ill. Reg. _____, effective _____)